

CLD-246

June 21, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1733**

UNITED STATES OF AMERICA

VS.

CURTIS D. HALL, a/k/a TRAJ, Appellant

(M.D. Pa. Crim. No. 1-11-cr-00076-006)

Present: CHAGARES, GREENAWAY, JR. and FUENTES, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1),

in the above-captioned case.

Respectfully,

Clerk

ORDER_____

Appellant's request for a certificate of appealability is denied because jurists of reason would not debate the District Court's denial of his motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Our decisions in United States v. Wilson, 880 F.3d 80 (3d Cir. 2018), cert. denied, No. 17-8601 (U.S. May 29, 2018), and United States v. Robinson, 844 F.3d 137 (3d Cir. 2016), cert. denied, 138 S. Ct. 215 (2017), independently establish that appellant's conviction of bank robbery in violation of 18 U.S.C. § 2113(a) and (d) constitutes a "crime of violence" under the force or elements clause of 18 U.S.C. § 924(c)(3)(A). Jurists of reason would not debate that point.

By the Court,

s/Joseph A. Greenaway, Jr.
Circuit Judge



A True Copy:

Patricia A. Dodsweart

Patricia S. Dodsweart, Clerk
Certified Order Issued in Lieu of Mandate

Dated: June 27, 2018

CLW/cc: Daryl F. Bloom, Esq.

Frederick W. Ulrich, Esq.

CLD-244

June 21, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1731**

UNITED STATES OF AMERICA

VS.

MARTINEL LAMAR HILL, a/k/a Telly, Appellant

(M.D. Pa. Crim. No. 1-11-cr-00076-003)

Present: CHAGARES, GREENAWAY, JR. and FUENTES, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1),

in the above-captioned case.

Respectfully,

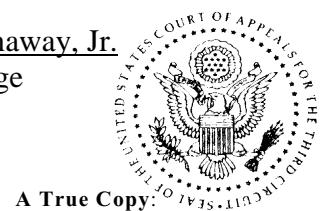
Clerk

ORDER

Appellant's request for a certificate of appealability is denied because jurists of reason would not debate the District Court's denial of his motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Our decisions in United States v. Wilson, 880 F.3d 80 (3d Cir. 2018), cert. denied, No. 17-8601 (U.S. May 29, 2018), and United States v. Robinson, 844 F.3d 137 (3d Cir. 2016), cert. denied, 138 S. Ct. 215 (2017), independently establish that appellant's convictions of bank robbery in violation of 18 U.S.C. § 2113(a) and (d) constitute "crimes of violence" under the force or elements clause of 18 U.S.C. § 924(c)(3)(A). Jurists of reason would not debate that point.

By the Court,

s/ Joseph A. Greenaway, Jr.
Circuit Judge



A True Copy:

Patricia A. Dodsweit

Patricia S. Dodsweit, Clerk
Certified Order Issued in Lieu of Mandate

Dated: June 27, 2018

CLW/cc: Daryl F. Bloom, Esq.

Frederick W. Ulrich, Esq.

CLD-242

June 21, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1729**

UNITED STATES OF AMERICA

VS.

DERRICK RYAN JACKSON, a/k/a Piglet, Appellant

(M.D. Pa. Crim. No. 1-11-cr-00076-001)

Present: CHAGARES, GREENAWAY, JR. and FUENTES, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1),

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability is denied because jurists of reason would not debate the District Court's denial of his motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Our decisions in United States v. Wilson, 880 F.3d 80 (3d Cir. 2018), cert. denied, No. 17-8601 (U.S. May 29, 2018), and United States v. Robinson, 844 F.3d 137 (3d Cir. 2016), cert. denied, 138 S. Ct. 215 (2017), independently establish that appellant's convictions of bank robbery in violation of 18 U.S.C. § 2113(a) and (d) constitute "crimes of violence" under the force or elements clause of 18 U.S.C. § 924(c)(3)(A). Jurists of reason would not debate that point.

By the Court,

s/ Joseph A. Greenaway
Circuit Judge

A True Copy:

Patricia A. Dodsweat

Patricia S. Dodsweat, Clerk
Certified Order Issued in Lieu of Mandate

Dated: June 27, 2018

CLW/cc: Daryl F. Bloom, Esq.

Frederick W. Ulrich, Esq.

CLD-245

June 21, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1732**

UNITED STATES OF AMERICA

VS.

DANYEL T. PROCTOR, a/k/a Proc, Appellant

(M.D. Pa. Crim. No. 1-11-cr-00076-004)

Present: CHAGARES, GREENAWAY, JR. and FUENTES, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1),

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability is denied because jurists of reason would not debate the District Court's denial of his motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Our decisions in United States v. Wilson, 880 F.3d 80 (3d Cir. 2018), cert. denied, No. 17-8601 (U.S. May 29, 2018), and United States v. Robinson, 844 F.3d 137 (3d Cir. 2016), cert. denied, 138 S. Ct. 215 (2017), independently establish that appellant's convictions of bank robbery in violation of 18 U.S.C. § 2113(a) constitute "crimes of violence" under the force or elements clause of 18 U.S.C. § 924(c)(3)(A). Jurists of reason would not debate that point.

By the Court,

s/ Joseph A. Greenaway, Jr.
Circuit Judge



A True Copy:



Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

Dated: June 27, 2018

CLW/cc: Daryl F. Bloom, Esq.

Quin M. Sorenson, Esq.

CLD-243

June 21, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1730**

UNITED STATES OF AMERICA

VS.

MIGUEL ANGEL ROSARIO, a/k/a LITTLES, Appellant

(M.D. Pa. Crim. No. 1-11-cr-00076-002)

Present: CHAGARES, GREENAWAY, JR. and FUENTES, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1),

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability is denied because jurists of reason would not debate the District Court's denial of his motion under 28 U.S.C. § 2255. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Our decisions in United States v. Wilson, 880 F.3d 80 (3d Cir. 2018), cert. denied, No. 17-8601 (U.S. May 29, 2018), and United States v. Robinson, 844 F.3d 137 (3d Cir. 2016), cert. denied, 138 S. Ct. 215 (2017), independently establish that appellant's convictions of bank robbery in violation of 18 U.S.C. § 2113(a) and (d) constitute "crimes of violence" under the force or elements clause of 18 U.S.C. § 924(c)(3)(A). Jurists of reason would not debate that point.

By the Court,

s/ Joseph A. Greenaway, Jr.
Circuit Judge

A True Copy:



Patricia S. Dodsweit, Clerk
Certified Order Issued in Lieu of Mandate

Dated: June 27, 2018

CLW/cc: Daryl F. Bloom, Esq.

Quin M. Sorenson, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	1:11-cr-76
	:	
v.	:	Hon. John E. Jones III
DERRICK RYAN JACKSON;	:	
MIGUEL ANGEL ROSARIO;	:	
MARTINEL LAMAR HILL;	:	
DANYEL T. PROCTOR;	:	
CURTIS D. HALL;	:	
Defendants.	:	

MEMORANDUM

March 6, 2018

Before the Court are the 28 U.S.C. § 2255 motions to vacate conviction and sentence of Defendants Derrick Jackson, Danyel Proctor, Curtis Hall, Miguel Rosario, and Martinel Hill (hereinafter collectively referred to as “Defendants”). (Docs. 527, 529, 533, 534, 539). The Defendants’ motions were filed following the United States Supreme Court’s decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), which invalidated the residual clause of the Armed Career Criminal Act (“ACCA”) as unconstitutionally vague. The disposition of the pending motions was temporarily stayed by our Order of August 15, 2016 (Doc. 550), pending the United States Court of Appeals for the Third Circuit’s decision in *United States v. Robinson*, 844 F.3d 137 (3d Cir. 2016), *cert. denied*, 138 S. Ct. 215 (2017), which, for the reasons described in this Memorandum, was essential

guidance to our determination herein. The Third Circuit affirmed the petitioner's contemporaneous convictions of brandishing a firearm during the commission of a crime of violence, in violation of 18 U.S.C. § 924(c), and Hobbs Act robbery under 18 U.S.C. § 1951(a). Following the *Robinson* decision, the government filed briefs in opposition and Defendants filed replies. The motions were again stayed pending the United States Supreme Court's consideration of petitions for writ of certiorari in *Robinson* as well as *United States v. Galati*, 844 F.3d 152 (3d Cir. 2016), *cert. denied*, 199 L. Ed. 2d 541 (U.S. 2018). The Supreme Court denied the petition for writ of certiorari in *Robinson* on October 2, 2017, and in *Galati* on January 8, 2018. Thus, the motions, which have been fully briefed by the parties, are ripe for our review and disposition. For the reasons that follow, the motions shall be denied.

I. DISCUSSION

Defendants in this criminal prosecution were charged with various counts of bank robbery, in violation of 18 U.S.C. § 2113, and use of a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c). All pleaded guilty to at least one count of bank robbery pursuant to 18 U.S.C. § 2113, and to one count of use of a firearm in connection with a crime of violence, in violation of 18 U.S.C. § 924(c).

In the instant § 2255 motions, Defendants argue that their sentences must be corrected in light of the United States Supreme Court's ruling in *Johnson v. United*

States, 135 S. Ct. 2251 (2015). As noted above, in *Johnson*, the Supreme Court declared ACCA’s residual clause, as set forth in 18 U.S.C. § 924(e)(2)(B)(ii), as unconstitutionally vague. Specifically, that residual clause defined “violent felony” as one that “otherwise involves conduct that presents a serious potential risk of physical injury to another.”

Following *Johnson*, a flurry of litigation testing the constitutionality of other statutory provisions resembling ACCA’s residual clause ensued. One of the provisions that has been repeatedly challenged is the residual clause contained in 18 U.S.C. § 924(c). The Third Circuit’s first opportunity to address whether *Johnson* extends to § 924(c)’s residual clause was in *Robinson*. Thus, while *Johnson* provided the vehicle for Defendants’ motions, it does not guide our inquiry. Instead, we are guided by *Robinson*.

Defendants argue that their sentences must be vacated because (1) § 2113 bank robbery is not a crime of violence under § 924(c)’s force clause and (2) § 924(c)’s residual clause is void for vagueness in light of *Johnson*.¹ Defendants maintain that the categorical approach should guide our analysis of whether bank

¹ Under § 924(c), a defendant faces enhanced sentencing penalties if he or she uses a firearm during a “crime of violence.” An offense qualifies as a crime of violence under that section if it is “a felony” that (1) has as an element the use, attempted use, or threatened use of physical force against the person or property of another (“force clause”), or (2) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense (“residual clause”). See 18 U.S.C. § 924(c)(3). Because we conclude that Defendants’ § 2113 offenses constitute crimes of violence under the force clause, we do not address their challenges to the residual clause.

robbery is a crime of violence under the force clause. Under the categorical approach, a court examines a predicate offense “in terms of how the law defines the offense and not in terms of how an individual offender might have committed it on a particular occasion.” *Begay v. United States*, 553 U.S. 137, 141 (2008). Defendants submit that, under the categorical approach, § 2113 bank robbery does not categorically qualify as a crime of violence under the force clause because it can be accomplished by “intimidation.” Intimidation, they argue, does not require the “use, attempted use, or threatened use of physical force.” Defendants thus suggest that because § 2113 bank robbery can be accomplished by means that do not involve physical force, § 2113 bank robbery *cannot* qualify as a crime of violence under the force clause.

However, as the Third Circuit instructed in *Robinson*, application of the categorical approach is unnecessary when, as here, a § 924(c) offense and the predicate offense are contemporaneous. The petitioner in *Robinson* similarly argued that courts should apply the categorical approach to determine whether Hobbs Act robbery qualifies as a crime of violence under § 924(c)’s force clause. 844 F.3d 137, 141 (3d Cir. 2016). *Robinson*, like Defendants here, argued that Hobbs Act robbery does not qualify as a crime of violence under the force clause because it can be accomplished by means that do not involve physical force. *Id.* at 144. The Third Circuit disagreed, explaining that “the determination of whether a

particular crime qualifies as a ‘crime of violence’ under § 924(c) depends upon both the predicate offense . . . and the contemporaneous conviction under § 924(c).” *Id.* at 143. The § 924(c) conviction thus sheds light on how the predicate offense was committed.

Here, Defendants’ predicate offenses—§ 2113 bank robbery—and their § 924(c) offenses occurred contemporaneously. We therefore examine all the offenses committed in order to ascertain whether Defendants used, attempted, or threatened physical force in committing the predicate offense. *United States v. Galati*, 844 F.3d 152, 155 (3d Cir. 2016). “The only facts that may support the conclusion that a particular crime is a ‘crime of violence’ are those that have either been found by the jury or admitted by the defendant in a plea.” *Robinson*, 844 F.3d at 143.

Defendants pleaded guilty to using a firearm, in violation of 18 U.S.C. § 924(c), in connection with committing bank robbery under 18 U.S.C. § 2113. Thus, the question is not whether § 2113 bank robbery constitutes a crime of violence. Rather, it is whether a § 2113 bank robbery that was committed *using a firearm* constitutes a crime of violence. We find that the answer to this question is unequivocally yes. Consequently, the Defendants’ motions will be denied.

An appropriate Order shall issue.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	1:11-cr-76
	:	
v.	:	
	:	Hon. John E. Jones III
DERRICK RYAN JACKSON;	:	
MIGUEL ANGEL ROSARIO;	:	
MARTINEL LAMAR HILL;	:	
DANYEL T. PROCTOR;	:	
CURTIS D. HALL;	:	
Defendants.	:	

ORDER

March 6, 2018

Upon consideration of the 28 U.S.C. § 2255 motions to vacate conviction and sentence, and in accordance with the Court's Memorandum of the same date, it is hereby **ORDERED** that:

1. The 28 U.S.C. § 2255 motions to vacate conviction and sentence of Defendants Derrick Jackson, Danyel Proctor, Curtis Hall, Miguel Rosario, and Martinel Hill (Docs. 527, 529, 533, 534, 539) are **DENIED**.
2. No certificate of appealability shall issue.
3. The Clerk of Court shall **CLOSE** the accompanying civil docket numbers, 1:16-cv-00676, 1:16-cv-00691, 1:16-cv-00901, 1:16-cv-00906, and 1:16-cv-01025.

s/ John E. Jones III
John E. Jones III
United States District Judge

STATUTORY PROVISIONS

Section 924(c)(1) of Title 18 of the U.S. Code, which imposes a mandatory minimum term of imprisonment on any person who is found to have used a firearm during a “crime of violence,” provides as follows:

(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime –

- (i) be sentenced to a term of imprisonment of not less than 5 years;
- (ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
- (iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection –

- (i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or
- (ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall –

- (i) be sentenced to a term of imprisonment of not less than 25 years; and
- (ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

18 U.S.C. § 924(c)(1).

Section 924(c)(3) of Title 18 of the U.S. Code, which defines “crime of violence” in two clauses (known respectively as the “elements clause” and “residual clause”) for purposes of the enhancement of § 924(c)(1), provides as follows:

For purposes of this subsection the term “crime of violence” means an offense that is a felony and –

- (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3).

Section 924(c)(1) of Title 18 of the U.S. Code, which imposes a mandatory minimum term of imprisonment on any person who is convicted of a federal firearms offense and has three or more prior convictions of a “violent felony,” provides as follows:

In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

18 U.S.C. § 924(e)(1).

Section 924(e)(2)(B) of Title 18 of the U.S. Code, which defines “violent felony” in two clauses (also known respectively as the “elements clause” and “residual clause”) for purposes of the enhancement of § 924(e)(1), provides as follows:

[T]he term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or

destructive device that would be punishable by imprisonment for such term if committed by an adult, that –

- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another

18 U.S.C. § 924(e)(2)(B).

Section 924(e)(2)(B) of Title 18 of the U.S. Code, which defines “violent felony” in two clauses (also known respectively as the “elements clause” and “residual clause”) for purposes of the enhancement of § 924(e)(1), provides as follows:

[T]he term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that –

- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another

18 U.S.C. § 924(e)(2)(B).

Section 2253 of Title 28 of the U.S. Code, which authorizes appeals from a decision denying a motion for postconviction relief, provides as follows:

- (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253.

Section 225 of Title 28 of the U.S. Code, which authorizes motions for postconviction relief, provides as follows:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain –

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.